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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,
Plaintiffs

and
United States of America,
Plaintiff-Intervenor,

v.
Tucson Unified School District, et al.,
Defendants,

and
Sidney L. Sutton, et al.,
Defendants-Intervenors,

No. CV-74-00090-TUC-DCB
(Lead Case)

Maria Mendoza, et al.,
Plaintiffs,

and
United States of America,
Plaintiff-Intervenor,

v.
Tucson Unified School District, et al.
Defendants.

No. CV-74-0204-TUC-DCB
(Consolidated Case)

ORDER

1 When the Court last reviewed the African American Student Support Department
2 (AASSD) and Mexican American Student Support Department (MASSD) Plans, it noted
3 the continued disagreement between the parties and the Special Master over the continued
4 existence of these expensive departments, which in part duplicate student support services
5 being delivered on-site at individual schools. The Court instructed the District to revise the
6 plans with an eye towards addressing the Special Master's concerns and to eliminate
7 duplication and ensure effective delivery of services, with the presumption being that
8 student-support services are most effectively delivered on-site at the schools. The Court
9 hoped that the parties would take the opportunity to create new and improved Student
10 Support Departments, responsive to the many departmental and program changes that have
11 arisen from the implementation of the USP.

12 Again, the District files AASSD and MASSD plans, the Plaintiffs object, and the
13 Special Master reasserts that the departments unnecessarily waste money. The Court
14 adopts the opinion of the Special Master that any further revisions based on directives for
15 the parties to work together would pointlessly result in more of the same. Therefore, the
16 Court changes its approach and asks the Special Master to develop the AASSD and
17 MASSD Plans. The Court agrees with the Special Master that if the departments remain
18 post-unitary status, their roles and responsibilities must change and be more limited. A
19 successful Unitary Status Plan (USP) requires this because as TUSD's core capacity grows,
20 the responsibility for improved academic achievement for Plaintiffs no longer sits with
21 AASSD and MASSD.

22 The District hired Traben and Associates to report on academic achievement for
23 African American students in TUSD. The Trayben Report reflects: "it has always been its
24 position that AASSD supplement educational services that should be provided by the
25 District, not supplant them." (Trayben and Associates' report, Draft Plan for Restructuring
26 AASSD for School Year 2018-2020, (Doc. 2276) at 36.) The Traben Report reflects that
27 the District should revise the Plans to "shift[] direction for 100% direct services to a balance
28 between direct services to students and direct support for departments and schools by

1 building institutional capacity of teachers and other support staff..” *Id.* at 27-39.
2 Unfortunately, Traben and Associates were not asked to “determine whether [AASSD] is
3 needed, cost efficient, effective in improving student achievement, and/or closing the gap
4 between white and African American students.” *Id.* 26. Instead, Trayben was “specifically
5 directed to evaluate the current plan,” which it did. *Id.*

6 The Trayben Report helps to set priorities AASSD. The Objections also help to
7 identify departmental roles and responsibilities, which in Plaintiffs’ opinions, should be the
8 priority of the AASSD and MASSD departments. The Mendoza Objections are especially
9 helpful in identifying specific student support services which they believe should be
10 directly delivered by MASSD, including student support services, family outreach, to ELL
11 students, because they cannot be secured at the school-site level.

12 Putting all this together, the Special Master should be able to develop the AASSD
13 and MASSD Plans. As pointed out by the Fisher Plaintiffs, these departments have been in
14 operation for a long time, operating more or less similarly to the proposed plans. *See* (Fisher
15 Objection (Doc. 2276) at 7 (describing latest plan as “not significantly different from the
16 program that has been in place for at least the last five (5) years.”) There is no need for
17 further study or data acquisition. The Court rejects the Special Master’s recommendation
18 for an evaluation plan to determine the effectiveness of both departments. What remains is
19 the question of: when and how do AASSD and MASSD move from the recently filed 2018-
20 19 plans, which seem stuck in the past, to the future. For this answer, the Court looks to
21 the Special Master.

22 First, the Court finds that there is a role for both AASSD and MASSD post-unitary
23 status. Next, the Court directs the Special Master to review the Trayben report and the
24 Plaintiffs’ Objections and identify student-support service priorities for each department.
25 The Special Master shall work with the District to develop future plans for AASSD and
26 MASSD departments that provide core-departments of TUSD with expert support to
27 teachers and administrators to meet their responsibilities to enhance student learning and
28 administer discipline in fair and equitable ways. The structure and relationship between

1 AASSD and MASSD and core TUSD departments, including top administrators and/or
2 administrative departments, shall be such that AASSD and MASSD have meaningful lines
3 of communication for effective collaboration and to ensure that recommendations flowing
4 from AASSD and MASSD are seriously considered and addressed by the District. The
5 Special Master shall identify, with specificity, any direct student support services to be
6 provided by AASSD and MASSD staff. There shall be no duplication of student support
7 services, with AASSD and MASSD providing direct student services only when such
8 services cannot not be more effectively provided by school staff. All AASSD and MASSD
9 staff shall be at least equally qualified in comparison to their on-site professional peers.

10 **Accordingly,**

11 **IT IS ORDERED** that the Special Master's Report and Recommendation (Doc.
12 2347) is adopted in part and denied in part.

13 **IT IS FURTHER ORDERED** that within 30 days of the filing date of this Order,
14 the District shall file the AASSD and MASSD plans, developed pursuant to this Order. The
15 parties may file Objections within 14 days. The Special Master may file a Report and
16 Recommendation in reply within 7 days of any Objection.

17 Dated this 5th day of November, 2019.

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Honorable David C. Bury
United States District Judge